## REMARKS/ARGUMENTS

In this Amendment, claims 34-36, 38-40, 48 and 52 are currently amended. Claims 1-33, 37, 49, 51, 53 and 54 are canceled without prejudice or disclaimer; claims 41, 42, 45-47, 50 and 55-67 were previously presented; and claims 43 and 44 stand withdrawn. No new matter has been introduced into the application by virtue of the amended claims.

Accordingly, claims 34-36, 38-42, 45-48, 50, 52 and 55-67 are currently pending in this application.

On page 3 of the 08/16/05 Office Action, the Examiner has objected to claims 35, 36, 38, 39 and 52 as being "dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." In this Amendment, claims 35, 36, 38 and 39 have been amended to address and overcome the Examiner's objection. Claim 52 has been amended as to dependency. In view of the currently-presented claims, it is submitted that the objected to claims are now in condition for allowance.

Also on page 3 of the Office Action, the Examiner has indicated that pending claims 55-67 are allowed.

Applicant requests that upon a determination of allowability of the currently pending claims, including the elected species, in this application, the Examiner extend examination to the non-elected species of claims 43 and 44 that read on the pending claims, as mentioned on page 3 of the 10/01/03 Office Action (Paper No. 26).

### Rejection under 35 U.S.C. §103(a)

Claims 33, 34, 40-42, 45-48 and 50 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,091,187 to Haynes (hereinafter "Haynes") in view of U.S. Patent No. 5,776,495 to Duclos (hereinafter "Duclos"). According to the Examiner, "it would have been obvious to one of ordinary skill in the art to use the fenofibrate of Duclos in the

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Haynes sonication process to produce a fenofibrate surface modified microparticulate composition with enhanced serum absorption properties." The Examiner has opined that the motivation rests in the desire to provide microparticulate compositions capable of achieving optimum therapeutic efficacy.

It is submitted that in view of the cancellation without prejudice of claim 33 and the presently amended claims 34-36, 38, 39, 40 and 48, this rejection is mooted. In view of the foregoing, it is respectfully requested that the rejection under 35 U.S.C. §103(a) be withdrawn.

## CONCLUSION

Applicant respectfully submits that this application is now in condition for allowance. An action progressing this application to issue is courteously urged.

Should any additional fees be deemed to be properly assessable in this application for the timely consideration of this Amendment and response, or during the pendancy of this application, the Commissioner is hereby authorized to charge any such additional fee(s), or to credit any overpayment, to Deposit Account No. **50-0311**, Reference No. **28069-547-CIP2**, Customer No. **34537**.

If the Examiner believes that further discussion of the application would be helpful, he is respectfully requested to telephone the undersigned at (212) 692-6742 and is assured of full cooperation in an effort to advance the prosecution of the instant application and claims to allowance.

Respectfully submitted,

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

Date:    October 19, 2005        By: _____
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